## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

EQUAL EMPLOYMENT	)
OPPORTUNITY COMMISSION,	Case No. 3:21-cv-00753
Plaintiff,	)
v.	) Chief Judge Waverly D. Crenshaw Jr.
	) Magistrate Judge Alistair Newbern
THE WHITING TURNER	)
CONTRACTING COMPANY,	) Jury Demand
	)
Defendant.	)
	)

## PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Equal Employment Opportunity Commission (Commission) submits this memorandum in support of the Commission's Motion for Leave to File Motion for Partial Summary Judgment with respect to the ninth and twenty-sixth affirmative defenses asserted by Defendant Whiting-Turner Contracting Company (Whiting-Turner) in its Answer to the Commission's Complaint.

Whiting-Turner's ninth defense states: "Some or all of Plaintiff's claims may be barred for a failure to exhaust administrative remedies." *See* Doc. No. 12, Def.'s Answer to Pl.'s Complaint at 16. Whiting-Turner's twenty-sixth defense states: "The EEOC has failed to meet its burden to conciliate this matter in good faith." *Id.* at 18.

The Commission believes this Court should grant partial summary judgment on whether the Commission satisfied any and all administrative, jurisdictional, or procedural prerequisites to suit, including the Commission's pre-suit conciliation requirements in accordance with 42 U.S.C. § 2000e-5(b) and *Mach Mining, LLC v. EEOC*, 575 U.S. 480 (2015).

The Commission believes an early ruling by the Court on this issue is in both parties' best interest. There is ample evidence under current Supreme Court case law to support a ruling for the Commission on this issue. And it appears in the best interest of the parties that the Court allow the Commission to present evidence prior to trial so that both parties can preserve financial and judicial resources, as the Commission's success on this issue will narrow the scope of the lawsuit. Further, it will resolve current and anticipated discovery disputes.

Accordingly, for these reasons, the Commission respectfully requests that this Court grant its motion and allow the Commission leave to file its motion for partial summary judgment.

Dated: June , 2022

ATTORNEYS FOR PLAINTIFF

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading has been served on the following attorney(s) by electronic means.

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s/ Roslyn Griffin Pack
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## **CERTIFICATE OF SERVICE**

I certify that on June \_\_\_, 2022, a copy of this document was filed electronically. Notice of this filing will be sent through the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Roslyn Griffin Pack
Roslyn Griffin Pack